



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 20, 1998

Ms. Judith Doran  
Open Records Coordinator  
Texas Parks & Wildlife  
4200 Smith School Road  
Austin, Texas 78744-3291

OR98-2792

Dear Ms. Doran:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119896

The Texas Parks and Wildlife Department (the "department") received a request for twenty categories of information concerning the department's reduction in force and employment policies as well as specific information concerning the status and composition of the department. You contend that the responsive information is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the sample documents that you have submitted.<sup>1</sup>

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The department must meet both prongs of this test for information to be excepted under 552.103(a).

You explain that a former employee, who was terminated due to a reduction in force, has filed charges of discrimination with the Texas Commission on Human Rights and the Equal Employment Opportunity Commission. You have provided this office with the numbers in those charges. This office has previously held that a pending complaint before the Equal Employment Opportunity Commission indicates a substantial likelihood of potential litigation. Open Records Decision Nos. 386 (1983), 336 (1982), 281 (1981). Similarly, a complaint filed with the Texas Commission on Human Rights presents the same potential for litigation. You indicate that the charges are active at this time. Therefore, the department has met the first prong of the section 552.103(a) test. We also conclude that most of the requested documents are related to the anticipated litigation. We do not believe, however, that information responsive to request numbers eighteen and twenty relate to the anticipated litigation. *Texas Legal Found.*, 958 S.W.2d at 483. These requests merely seek the names and addresses of the department's commissioners and the department's 1997 annual financial report. See Gov't Code § 552.117 (official's address may be withheld if the official requests that this information be kept confidential under Gov't Code section 552.024). Consequently, except for the information requested by items eighteen and twenty and the information discussed below, the requested documents may be withheld under section 552.103(a).

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. In

addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref: ID# 119896

Enclosures: Submitted documents

cc: Mr. Wendell Handy  
4807 Bandera Road  
Austin, Texas 78721  
(w/o enclosures)